

84 Box 30 - JGR/Judges (6) – Roberts, John G.: Files SERIES
I: Subject File

THE WHITE HOUSE

WASHINGTON

March 13, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Tax Court Judges

I have been asked to prepare replies to letters to the President from Chief Judge Howard A. Dawson and Judge Samuel Sterrett of the Tax Court. In his letter of November 9, 1984 to the President, Judge Sterrett advises that he is willing and would like to accept reappointment upon expiration of his term on June 1, 1985. Judge Sterrett was recently elected to succeed Chief Judge Dawson as Chief Judge. If reappointed, Judge Sterrett -- first appointed by President Johnson and reappointed by President Nixon -- would be eligible to serve until 1992, when he will reach the mandatory retirement age of 70. (Dianna advises that a decision has been made to reappoint Sterrett.)

Chief Judge Dawson advised the President, in his letter of November 23, 1984, that he was willing to accept reappointment but that he plans to retire, if reappointed, in 1987. At that time the Chief Judge will be eligible to retire pursuant to 26 U.S.C. § 7447(b)(2) (age 65, service for at least 15 years). If the President does not reappoint Dawson, Dawson will be eligible to retire on June 1 of this year, pursuant to 26 U.S.C. § 7447(b)(3) (service for at least 15 years, willing to be reappointed but not reappointed). (It is my understanding that Dawson would prefer not to be reappointed.)

Attached are (1) a letter for the President's signature advising that he will not reappoint Dawson, with cover memorandum for Chew, and (2) a letter for your signature to Sterrett, congratulating him on his prospective reappointment and forwarding the appropriate clearance forms.

Attachments

THE WHITE HOUSE

WASHINGTON

March 14, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING^{Orig. signed by FFF}
COUNSEL TO THE PRESIDENT

SUBJECT: Letter from the President to Chief
Judge Dawson of the U.S. Tax Court

Chief Judge Dawson of the U.S. Tax Court has written the President, advising him that he is willing to accept re-appointment to another 15-year term on the Court but that, if reappointed, he will retire when eligible in 1987. If Dawson is not reappointed, he may retire when his term expires on June 1, 1985. Dawson's letter to the President was necessary because Tax Court judges under the age of 65 who are not reappointed may retire only if they have served at least 15 years and have advised the President in writing of their willingness to accept reappointment. 26 U.S.C. § 7447(b)(3). The attached proposed reply for the President's signature advises Dawson that he will not be reappointed and thanks him for his distinguished service on the Tax Court.

Attachment

FFF:JGR:aea 3/13/85

cc: FFFielding
JGRoberts
Subj
Chron

March 14, 1985

Dear Judge Dawson:

Thank you for your letter advising me of your willingness to accept reappointment as a Judge of the United States Tax Court. In that letter you indicated that, if reappointed, you would exercise your option to retire in 1987. In light of your expressed plans I have decided not to ask you to accept reappointment to another 15-year term.

I thank you for your willingness to accept reappointment, and for your distinguished tenure on the Tax Court. Your many years of service to your country have earned you the respect and gratitude not only of your colleagues and the members of the tax bar but of the Nation as a whole. Please accept my best wishes as you leave active service on the Tax Court and assume senior status.

Sincerely,

The Honorable Howard A. Dawson, Jr.
Chief Judge
United States Tax Court
Washington, D.C. 20217

RR:JGR:aea 3/13/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
WASHINGTON

March 14, 1985

Dear Judge Sterrett:

Thank you for your letter advising the President of your willingness to accept reappointment as a Judge of the United States Tax Court upon expiration of your current term on June 1, 1985. In connection with your prospective reappointment, it will be necessary for you to complete the enclosed forms and return them to me at your earliest convenience. If you have any questions concerning these forms, please do not hesitate to contact my office.

Please accept my congratulations on your prospective reappointment.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable Samuel B. Sterrett
United States Tax Court
Washington, D.C. 20217

FFF:JGR:aea 3/13/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: NOVEMBER 23, 1984

NAME OF CORRESPONDENT: THE HONORABLE HOWARD A. DAWSON JR.

SUBJECT: INFORMS OF WILLINGNESS FOR REAPPOINTMENT AS A
JUDGE OF THE UNITED STATES TAX COURT

DGA - p3
See me

ROUTE TO:		ACTION		DISPOSITION	
OFFICE/AGENCY	(STAFF NAME)	ACT CODE	DATE YY/MM/DD	TYPE RESP	COMPLETED D YY/MM/DD
FRED FIELDING		ORG	84/11/23		1/1
<u>CW AT 18</u>	REFERRAL NOTE:		<u>85/03/12</u>		<u>85/03/22</u>
	REFERRAL NOTE:		1/1		1/1
	REFERRAL NOTE:		1/1		1/1
	REFERRAL NOTE:		1/1		1/1
	REFERRAL NOTE:		1/1		1/1

COMMENTS:

ADDITIONAL CORRESPONDENTS MEDIA L INDIVIDUAL CODES

MI MAIL USER CODES: (A) (B) (C)

*ACTION CODES:	*DISPOSITION CODES:	*OUTGOING	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*CORRESPONDENCE	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	*TYPE RESP=INITIALS	*
*D-DRAFT RESPONSE	*C-COMPLETED	*OF SIGNER	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*CODE = A	*
*I-INFO COPY/NO ACT NEC		*COMPLETED = DATE OF	*
*R-DIRECT REPLY W/COPY		*OUTGOING	*
*S-FOR-SIGNATURE			*
*X-INTERIM REPLY			*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOB) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

261004

7.7.1984

UNITED STATES TAX COURT

WASHINGTON, D. C. 20217

CHAMBERS OF
HOWARD A. DAWSON, JR.
CHIEF JUDGE

November 23, 1984

The President
The White House
Washington, D.C. 20500

My dear Mr. President:

At the present time I am serving as a Judge of the United States Tax Court. I was first appointed by President Kennedy in 1962 to fill the incomplete term of a judge who retired. I was reappointed by President Nixon in 1970 for a 15-year term which expires on June 1, 1985.

In accordance with section 7447(b)(3) of the Internal Revenue Code of 1954, as amended by section 954(a) of Public Law 91-172, December 30, 1969, I wish to advise you that I am willing to accept reappointment as a Judge of the United States Tax Court. I also wish to advise you that, if I should be reappointed to a new 15-year term, I intend to exercise my option to retire (assume senior status) on October 23, 1987, which means I would serve about two and a half years on such a term. Therefore, you may find it advisable to appoint someone else to the new 15-year term. If that is your decision, I will retire (assume senior status) on June 1, 1985, pursuant to section 7447(b)(3), and section 7447(d) and (e), Internal Revenue Code of 1954, as amended.

My service on the Tax Court has been very rewarding and has spanned almost 23 years and my government service over 37 years. For three terms (6 years) my colleagues have honored me by electing me as their Chief Judge.

Respectfully,

Howard A. Dawson, Jr.

Howard A. Dawson, Jr.
Chief Judge

Enclosure:
Biographical Data

Biographical Data

HOWARD A. DAWSON, JR., judge--Arkansas--born October 23, 1922, Okolona, Ark., son of Howard A. Dawson (rural educator) and Mamie Watson Dawson (teacher); married Marianne Atherholt in 1946; two daughters, Amy and Suzanne; graduated from Woodrow Wilson High School, Washington, D.C., in 1940; University of North Carolina, B.S. in business administration, 1946; George Washington University Law School, J.D. with honors, 1949; president, Case Club; secretary-treasurer, Student Bar Association; private practice of law, Washington, D.C., 1949-50; served with the U.S. Treasury Department, Internal Revenue Service, as follows: Attorney, Civil Division, Office of Chief Counsel, 1950-53; Civil Advisory Counsel, Atlanta District, 1953-57; Regional Counsel, Atlanta Region, 1958; Personal Assistant to Chief Counsel, December 1, 1958 to June 1, 1959; and Assistant Chief Counsel (Administration), June 1, 1959 to August 19, 1962; military service: U.S. Army Finance Corps, 1942-45; served 2 years in European theater; Captain, Finance Corps, U.S. Army Reserve; member of District of Columbia Bar, Georgia Bar, American Bar Association (Section of Taxation), Federal Bar Association, National Lawyers Club, Delta Theta Phi Legal Fraternity, George Washington University Law Alumni Association; appointed by President Kennedy on August 21, 1962, to the United States Tax Court for term expiring June 1, 1970; reappointed by President Nixon on May 21, 1970, to the United States Tax Court for a 15-year term expiring June 1, 1985; elected Chief Judge for a 2-year term beginning July 1, 1973; reelected Chief Judge for a 2-year term beginning July 1, 1975; again elected Chief Judge for a 2-year term beginning July 1, 1983; residence: 7408 Nevis Road, Bethesda, Md.

UNITED STATES TAX COURT

WASHINGTON, D. C. 20217

CHAMBERS OF
HOWARD A. DAWSON, JR.
CHIEF JUDGE

November 23, 1984

*wants us to turn
him down so
he can retire*

Fay = June 1985

The President
The White House
Washington, D.C. 20500

My dear Mr. President:

At the present time I am serving as a Judge of the United States Tax Court. I was first appointed by President Kennedy in 1962 to fill the incomplete term of a judge who retired. I was reappointed by President Nixon in 1970 for a 15-year term which expires on June 1, 1985.

In accordance with section 7447(b)(3) of the Internal Revenue Code of 1954, as amended by section 954(a) of Public Law 91-172, December 30, 1969, I wish to advise you that I am willing to accept reappointment as a Judge of the United States Tax Court. I also wish to advise you that, if I should be reappointed to a new 15-year term, I intend to exercise my option to retire (assume senior status) on October 23, 1987, which means I would serve about two and a half years on such a term. Therefore, you may find it advisable to appoint someone else to the new 15-year term. If that is your decision, I will retire (assume senior status) on June 1, 1985, pursuant to section 7447(b)(3), and section 7447(d) and (e), Internal Revenue Code of 1954, as amended.

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Respectfully,

Howard A. Dawson, Jr.
Howard A. Dawson, Jr.
Chief Judge

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HOWARD A. DAWSON, JR., judge--Arkansas--born October 23, 1922, Okolona, Ark., son of Howard A. Dawson (rural educator) and Mamie Watson Dawson (teacher); married Marianne Atherholt in 1946; two daughters, Amy and Suzanne; graduated from Woodrow Wilson High School, Washington, D.C., in 1940; University of North Carolina, B.S. in business administration, 1946; George Washington University Law School, J.D. with honors, 1949; president, Case Club; secretary-treasurer, Student Bar Association; private practice of law, Washington, D.C., 1949-50; served with the U.S. Treasury Department, Internal Revenue Service, as follows: Attorney, Civil Division, Office of Chief Counsel, 1950-53; Civil Advisory Counsel, Atlanta District, 1953-57; Regional Counsel, Atlanta Region, 1958; Personal Assistant to Chief Counsel, December 1, 1958 to June 1, 1959; and Assistant Chief Counsel (Administration), June 1, 1959 to August 19, 1962; military service: U.S. Army Finance Corps, 1942-45; served 2 years in European theater; Captain, Finance Corps, U.S. Army Reserve; member of District of Columbia Bar, Georgia Bar, American Bar Association (Section of Taxation), Federal Bar Association, National Lawyers Club, Delta Theta Phi Legal Fraternity, George Washington University Law Alumni Association; appointed by President Kennedy on August 21, 1962, to the United States Tax Court for term expiring June 1, 1970; reappointed by President Nixon on May 21, 1970, to the United States Tax Court for a 15-year term expiring June 1, 1985; elected Chief Judge for a 2-year term beginning July 1, 1973; reelected Chief Judge for a 2-year term beginning July 1, 1975; again elected Chief Judge for a 2-year term beginning July 1, 1983; residence: 7408 Nevis Road, Bethesda, Md.

UNITED STATES TAX COURT

WASHINGTON, D. C. 20217

November 9, 1984

CHAMBERS OF
SAMUEL B. STERRETT
JUDGE

*Democrat
reappointed (1 yr.)*

The President
The White House
Washington, D. C. 20500

My dear Mr. President:

At the present time, I am serving as a Judge of the United States Tax Court. I was first appointed in 1968 to fill an incomplete term and was reappointed in 1970 for a term which ends on June 1, 1985.

In accordance with the provisions of section 7447(b)(3) of the Internal Revenue Code of 1954, as amended by section 954(a) of Public Law 91-172, December 30, 1969, I wish to take this opportunity to advise you that I am willing and would be highly honored and privileged to accept reappointment as Judge of the United States Tax Court upon expiration of my current term on June 1, 1985.

I am in excellent health and physical condition, and I look forward with enthusiasm and anticipation to a further opportunity for service.

Respectfully,

Samuel B. Sterrett

Samuel B. Sterrett

STERRETT, SAMUEL BLACK; born, Washington, D. C., December 17, 1922; son of Henry Hatch Dent and Helen (Black) Sterrett; student, St. Albans School, 1933-1941; graduate of U.S. Merchant Marine Academy, 1945; B.A., Amherst College, 1947; LL.B., University of Virginia, 1950; LL.M. in Taxation, New York University, 1959; married Jeane McBride, August 27, 1949; children-- Samuel Black, Jr., Robin Dent, Douglas McBride. Admitted to D.C. Bar, 1951, Virginia Bar, 1950; law firm Alvord & Alvord, Washington, D.C., 1950-1956; trial attorney, Office of Regional Counsel, Internal Revenue Service, New York City, 1956-1960; law firm Sullivan, Shea & Kenney, Washington, D.C. 1960-1968; member of the Tax Section of both American and D.C. Bar Associations and former Chairman of the D.C. Tax Section's Subcommittee on Corporate Reorganizations and Liquidations; Board of Managers, Chevy Chase Village, 1970-1974, Chairman, 1972-1974; member, Washington Cathedral Chapter, 1973-1981; member, Governing Board, St. Albans School, 1977-1981; Trustee, Louise Home, 1979- . Served with AUS, 1943, U.S. Merchant Marine, 1943-1946. Member, American, Federal, Virginia and D.C. Bar Associations; Society of the Cincinnati; Beta Theta Pi. Residence in Chevy Chase, Maryland. Appointed to the Tax Court for the term expiring June 1, 1970, to succeed Judge J. Gregory Bruce, who retired. Reappointed for a 15-year term expiring June 1, 1985.

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 258541

INCOMING

DATE RECEIVED: NOVEMBER 09, 1984

NAME OF CORRESPONDENT: THE HONORABLE SAMUEL B. STERRETT

SUBJECT REQUESTS TO BE REAPPOINTED AS JUDGE OF THE
U.S. TAX COURT UPON EXPIRATION OF CURRENT
TERM ON JUN 1 85

ACTION DISPOSITION

ROUTE TO: OFFICE/AGENCY (STAFF NAME) ACT DATE TYPE C COMPLETED
CODE YY/MM/DD RESP D YY/MM/DD

FRED FIELDING ORG 84/11/09 1 1

WAT 18 REFERRAL NOTE: D 8510312 58510312

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COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES:

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*R-DIRECT REPLY W/COPY * * *
*S-FOR-SIGNATURE * * *
*X-INTERIM REPLY * * *

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MANAGEMENT.

258541

Fred Zilding

UNITED STATES TAX COURT

WASHINGTON, D. C. 20217

November 9, 1984

CHAMBERS OF
SAMUEL B. STERRETT
JUDGE

The President
The White House
Washington, D. C. 20500

My dear Mr. President:

At the present time, I am serving as a Judge of the United States Tax Court. I was first appointed in 1968 to fill an incomplete term and was reappointed in 1970 for a term which ends on June 1, 1985.

In accordance with the provisions of section 7447(b)(3) of the Internal Revenue Code of 1954, as amended by section 954(a) of Public Law 91-172, December 30, 1969, I wish to take this opportunity to advise you that I am willing and would be highly honored and privileged to accept reappointment as Judge of the United States Tax Court upon expiration of my current term on June 1, 1985.

I am in excellent health and physical condition, and I look forward with enthusiasm and anticipation to a further opportunity for service.

Respectfully,

Samuel B. Sterrett

Samuel B. Sterrett

STERRETT, SAMUEL BLACK; born, Washington, D. C., December 17, 1922; son of Henry Hatch Dent and Helen (Black) Sterrett; student, St. Albans School, 1933-1941; graduate of U.S. Merchant Marine Academy, 1945; B.A., Amherst College, 1947; LL.B., University of Virginia, 1950; LL.M. in Taxation, New York University, 1959; married Jeane McBride, August 27, 1949; children-- Samuel Black, Jr., Robin Dent, Douglas McBride. Admitted to D.C. Bar, 1951, Virginia Bar, 1950; law firm Alvord & Alvord, Washington, D.C., 1950-1956; trial attorney, Office of Regional Counsel, Internal Revenue Service, New York City, 1956-1960; law firm Sullivan, Shea & Kenney, Washington, D.C. 1960-1968; member of the Tax Section of both American and D.C. Bar Associations and former Chairman of the D.C. Tax Section's Subcommittee on Corporate Reorganizations and Liquidations; Board of Managers, Chevy Chase Village, 1970-1974, Chairman, 1972-1974; member, Washington Cathedral Chapter, 1973-1981; member, Governing Board, St. Albans School, 1977-1981; Trustee, Louise Home, 1979- . Served with AUS, 1943, U.S. Merchant Marine, 1943-1946. Member, American, Federal, Virginia and D.C. Bar Associations; Society of the Cincinnati; Beta Theta Pi. Residence in Chevy Chase, Maryland. Appointed to the Tax Court for the term expiring June 1, 1970, to succeed Judge J. Gregory Bruce, who retired. Reappointed for a 15-year term expiring June 1, 1985.

UNITED STATES TAX COURT

WASHINGTON, D. C. 20217

CHAMBERS OF
HOWARD A. DAWSON, JR.
CHIEF JUDGE

January 11, 1985

DGA
R
Please See
me
1/14

Honorable Fred F. Fielding
Counsel to the President
The White House Office
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Fielding:

As you know, Judge Samuel B. Sterrett wrote to the President on November 9, 1984, expressing his willingness to accept reappointment as a Judge of the United States Tax Court when his present term expires on June 1, 1985.

My reason for writing this letter is to inform you that Judge Sterrett was elected by his colleagues to serve a two-year term as Chief Judge beginning July 1, 1985. I am enclosing a copy of the Court's Press Release dated January 5, 1985, announcing his election.

Sincerely yours,

Howard A. Dawson
Howard A. Dawson, Jr.
Chief Judge

Enclosure

UNITED STATES TAX COURT
Washington, D. C. 20217

January 8, 1985

PRESS RELEASE

Judge Samuel B. Sterrett has been elected as Chief Judge of the United States Tax Court to serve a 2-year term beginning July 1, 1985. He will succeed Howard A. Dawson, Jr., who is the present Chief Judge.

The election of the Chief Judge by the judges of the Tax Court is undertaken biennially in accordance with statutory requirements.

Judge Sterrett was born in Washington, D. C. on December 17, 1922. He graduated from St. Albans School in 1941, from Amherst College in 1947, and from the University of Virginia School of Law in 1950. He served during World War II with the United States Army and sailed in the Atlantic and Pacific as a second mate in the merchant marine after graduating from the United States Merchant Marine Academy in 1945. In 1959 he received an LL.M. in Taxation from New York University School of Law.

He practiced law with the firm of Alvord & Alvord in Washington, with the Office of Chief Counsel, Internal Revenue Service, in New York City, and was a partner in the law firm of Sullivan, Shea & Kenney, Washington, D. C., at the time of his appointment by President Johnson to the Tax Court in August 1968. He was reappointed to the Court by President Nixon in May 1970.

Judge Sterrett was a member of the Board of Managers of Chevy Chase Village from 1970 to 1974 and served as its Chairman from 1972 to 1974. He was a member of the Chapter of the National Cathedral from 1973 to 1981 and of the Governing Board of St. Albans School from 1977 to 1981. He was a member of the Board of Trustees of the Washington Hospital Center from 1967 to 1984 and served as its Chairman from 1979 to 1984. He has been Chairman of the Board of Trustees of the Washington Healthcare Corporation, a holding company, since its inception in 1982. He is a trustee of the Louise Home.

Judge Sterrett is a member of the Virginia State Bar, and of the Federal, District of Columbia, and American Bar Associations (Section of Taxation of latter two).

He married Jeane McBride in 1949; they have two sons and a daughter.

THE WHITE HOUSE
WASHINGTON

March 29, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Resolution Adopted by ABA Delegates
Regarding Attack on Judge Nils Mangard
of the Iran-United States Claims Tribunal

The Secretary of the American Bar Association, William Neukom, has forwarded to you a resolution adopted by the Section of International Law and Practice condemning the attack on Judge Nils Mangard of the Iran-United States Claims Tribunal on September 3, 1984. The resolution also supports principles of international law calling upon parties to resolve disputes through the arbitral process.

In light of the present sensitivity of international law issues generally (though there is no dispute about the atrociousness of the Mangard attack), I recommend simply acknowledging receipt of the resolution and forwarding it to both Justice and State.

Attachments

THE WHITE HOUSE

WASHINGTON

March 29, 1985

Dear Mr. Neukom:

Thank you for your recent letter forwarding the resolution adopted by the American Bar Association Section on International Law and Practice, condemning the attack on Judge Nils Mangard of the Iran-United States Claims Tribunal. I have forwarded the resolution to the Departments of State and Justice for their information.

I appreciate your apprising me of the action of the Association concerning this matter.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

William H. Neukom, Esquire
Secretary, American Bar Association
3500 First Interstate Center
Seattle, Washington 98104

FFF:JGR:aea 3/29/85
bcc: FFFfielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

March 29, 1985

Dear Mr. Neukom:

Thank you for your recent letter forwarding the resolution adopted by the American Bar Association Section on International Law and Practice, condemning the attack on Judge Nils Mangard of the Iran-United States Claims Tribunal. I have forwarded the resolution to the Departments of State and Justice for their information.

I appreciate your apprising me of the action of the Association concerning this matter.

Sincerely,

Fred F. Fielding
Counsel to the President

William H. Neukom, Esquire
Secretary, American Bar Association
3500 First Interstate Center
Seattle, Washington 98104

FFF:JGR:aea 3/29/85

bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

March 29, 1985

MEMORANDUM FOR DAVIS R. ROBINSON
LEGAL ADVISER
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Resolution Adopted by ABA Delegates
Regarding Attack on Judge Nils Mangard
of the Iran-United States Claims Tribunal

Attached for your information is a copy of a resolution adopted by the ABA Section on International Law and Practice, condemning the attack on Judge Nils Mangard of the Iran-United States Claims Tribunal. The resolution was forwarded to us by the Secretary of the ABA.

Attachment

FFF:JGR:aea 3/29/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

March 29, 1985

MEMORANDUM FOR DAVIS R. ROBINSON
LEGAL ADVISER
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Resolution Adopted by ABA Delegates
Regarding Attack on Judge Nils Mangard
of the Iran-United States Claims Tribunal

Attached for your information is a copy of a resolution adopted by the ABA Section on International Law and Practice, condemning the attack on Judge Nils Mangard of the Iran-United States Claims Tribunal. The resolution was forwarded to us by the Secretary of the ABA.

Attachment

FFF:JGR:aea 3/29/85

cc: FFFielding

JGRoberts

Subj

Chron

307549

ID #

CU

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1/85Name of Correspondent: William Newkorn☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Resolution adopted by ABA delegates re:
Attack on Judge Nils of the Iran-United
States Claims Tribunal

ROUTE TO:**ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>85103125</u>		<u>1 1</u>
<u>CUAT 18</u>	Referral Note: <u>D</u>	<u>85103127</u>		<u>S 85104107</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>
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	Referral Note:	<u>1 1</u>		<u>1 1</u>

ACTION CODES:

A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

A - Answered
 B - Non-Special Referral
 C - Completed
 S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEGB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

American Bar Association

SECRETARY
William H. Neukom
3500 First Interstate Center
Seattle WA 98104

WRITER'S DIRECT LINE

312/988-5155

March 15, 1985

307549CU

Mr. Fred Fielding
Counsel to the President
The White House Office
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

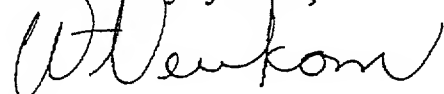
RE: The Attack on Judge Nils of the Iran-United
States Claims Tribunal

Dear Mr. Fielding:

At the meeting of the House of Delegates of the American Bar Association held February 18-19, 1985, the attached resolution was adopted upon recommendation of the Section of International Law and Practice. The action taken thus becomes the official policy of the Association in this matter.

This resolution is transmitted for your information and whatever action you may deem appropriate. Please do not hesitate to let us know if you need any further information, have any questions or if we can be of any assistance.

Sincerely yours,



William H. Neukom

WHN:bm
Attachment
1623f/0271q
0272q

cc: Mont P. Hoyt, Chairman
Section of International Law

Resolution Adopted
by the
American Bar Association
House of Delegates

1985 Midyear Meeting
February 18-19, 1985

Report No. 105

BE IT RESOLVED, That the American Bar Association:

1. Confirms its support of the principles of international law which call upon all parties to resolve disputes through peaceful means, including the arbitral process;
2. Confirms its support of implementation of the Algiers Accords, including the continued functioning of the Iran-United States Claims Tribunal (the "Tribunal") in an impartial and independent manner to resolve promptly and peacefully the claims placed within its jurisdiction;
3. Condemns the unprovoked attack on Judge Nils Mangard of the Tribunal on September 3, 1984 as contrary to the fundamental principle of peaceful settlement of international disputes and as wholly alien to the rule of law; and
4. In accordance with Goal VIII of the American Bar Association, calls upon other national and international organizations comprising members of the legal profession, to take appropriate action to affirm these essential principles and to condemn the attack on Judge Mangard.

THE WHITE HOUSE

WASHINGTON

April 2, 1985

Dear Senator Moynihan:

I have received your correspondence of April 1, after first having portions of it read to me by a reporter. (Under the circumstances, perhaps "correspondence" is a misnomer; "press release" might be more apt.) The combination of substance, tone, and date of your letter aroused my suspicions, but I am now convinced that, regrettably, you did not intend it as an April Fools Day joke. If you seriously think the Administration is guilty of "corruption" because the President will not nominate the attorney of your choice to fill a vacancy on the Federal bench, a reply is probably futile; you would seem to be beyond the bounds of constructive dialogue. I write, accordingly, in deference more to the position of the accuser than to the tenability of the accusation.

The Constitution vests in the President and the President alone the responsibility to nominate and appoint, by and with the advice and consent of the Senate, those who sit on the Federal bench. It is something less than surprising that you agree with the choice for a vacancy of a panel chosen by you; it should not be surprising that others may not. Because your candidate possesses perfectly acceptable professional qualifications for the bench, you assume the failure of the President to nominate him represents "a politicization of the judiciary." Nothing could be further from the truth.

The President is committed to appointing to the Federal bench highly qualified men and women of integrity who share his view of the limited role accorded the judicial branch by the Constitution. We seek to appoint outstanding lawyers who believe in the constitutional principle of judicial self-restraint, who recognize that the task of Federal judges is to interpret the Constitution and laws, not to rewrite them to accord with their personal public policy predilections. It is our firm belief that such judicial self-restraint not only implements the constitutional allocation of powers, by reserving policy choices to the

elected branches, but also ensures the independence and vitality of the judicial branch itself, enabling it effectively to discharge those crucial responsibilities that are vested in it by the Constitution.

Seeking to appoint judges who believe in judicial self-restraint in no sense "politicizes" the judiciary. The principle of judicial self-restraint is not the exclusive property of either Republicans or Democrats, nor as an historical matter has it been embraced only by conservatives or only by liberals. Indeed, the principle was perhaps most articulately promoted by New Deal liberals such as FDR's Solicitor General, later Justice, Robert Jackson. You may be interested to learn that a recent study by Professor Sheldon Goldman concluded that "past party activism" characterized nearly identical percentages of Reagan and Carter district court appointees (61.2% to 60.4%), but that such political activism was far more characteristic of Carter appellate court nominees (73.2%) than of Reagan appellate court nominees (58.1%). In sum, your charge of "politicization" reveals either ignorance of the facts or an inability to comprehend that the doctrine of "judicial self-restraint" is politically neutral.

It is not only the right but the duty of the President to appoint judges who share his judicial philosophy. Federal judges were purposefully insulated from popular pressure by the Framers. The only input of the citizenry on the judiciary occurs through the role of the politically accountable branches in the appointment process. You may not like it, but the voters elected Ronald Reagan to the office that nominates Federal judges, and under our democratic system the President would betray his trust were he not to seek to nominate qualified individuals who shared his judicial philosophy.

I cannot conclude without commenting on your last paragraph. I would be proud to be remembered for assisting the President in selecting Federal judges who will practice judicial self-restraint and thereby help implement the constitutional system that has safeguarded our liberties for nearly two hundred years. You are of course entitled to your opinion as to whether I am living up to the standards required of my position. I have never judged that question on the basis of the opinion of others, but have relied instead on the test articulated by Lincoln: I desire to so conduct myself that if, at the end of my "brief authority" (as you so poignantly put it) "I have lost every other friend on earth, I shall at

least have one friend left, and that friend shall be down inside of me." I will not be swayed from that position by someone bandying words like "corruption" with the skill of a practiced demagogue.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Daniel P. Moynihan
United States Senate
Washington, D.C. 20510

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United States Senate

WASHINGTON, D.C. 20510

April 1, 1985

Dear Mr. Fielding:

On March 15, 1984, I recommended to the President that William E. Hellerstein be nominated to fill a vacant Federal Judgeship in the Southern District of New York. My colleague, Seantor Alfonse M. D'Amato, joined me in that recommendation.

I made the recommendation on the advice of a bi-partisan judicial screening panel which I formed upon coming to the Senate in January, 1977. Over the years this body of eminent jurists, attorneys, and university professors has worked with the uttermost care to find the very best possible candidates for United States District Judges in each of our four Judicial Districts. As openings have occurred, they have sent me superbly qualified candidates; most often several, occasionally only one. Without exception I have recommended persons from among the names sent me. Without exception, during the previous administration, these names were in turn recommended by the President and approved by the Senate. The work of these judges since says all one would need to know of their quality.

In the case of Mr. Hellerstein, the panel interviewed 17 applicants, and forwarded his name as its single choice. When press accounts appeared that the administration was not responding to the nomination, some twenty-four former Federal prosecutors of the Southern District, describing themselves as having a "strong commitment to vigorous law enforcement," wrote to urge his "prompt appointment."

Lest silence on my part be misconstrued, I thereupon wrote Attorney General Smith reaffirming my support for Mr. Hellerstein. I received a polite reply from the Deputy Attorney General, but Mr. Hellerstein remained in limbo. We have continued to enquire in various ways; the administration has continued to evade our enquiries. Recently I learned that in March two prominent New York attorneys took it upon themselves to come to Washington to speak to you about this matter, but again without receiving any specific response.

Today, however, I learn in The New York Times that the administration has "decided" not to seek Mr. Hellerstein's confirmation for the position. The Times report goes on to state that administration officials "said Mr. Hellerstein was completely qualified but was regarded as holding views not consistent with the President's."

Must I believe that we are witnessing a politicization of the judiciary of the order some commentators now insist is happening and which few in the administration trouble to deny? Consider Mr. Hellerstein's qualifications. The twenty-four former prosecutors wrote:

We believe Mr. Hellerstein to be an outstandingly able lawyer. He has been approved by every Bar Association committee to which his qualifications have been presented. His professional background happens to have been as a public defender. We view this experience as a particularly precious asset on a court where much of the business involves indigent defendants accused of crime.

There is a word for the ideological tests for the judiciary which are seemingly now in place in the White House and the Justice Department. The word is corruption. If what the press reports is true, you and your associates, in the name of the President, have decided to impose a political test for Federal judges of an order so extreme as to be without precedent and altogether without warrant. This corrupts the system of appointment at its very outset.

If this is how you propose to use your brief authority, so be it. Understand that this is what you will be remembered for. I am sorry to seem harsh; and am sorrier yet that you seem not to comprehend the standards your position requires you to uphold.

Sincerely,



Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, DC 20500

Judges, Ideology, Outrage, Baloney

Since Washington

Washington.

A SMALL fluttering erupted in Democratic dovescotes last week when it transpired that three conservative Republicans had mailed a questionnaire to a judicial nominee. The Republicans wanted

By James J. Kilpatrick

to know something of the attitudes of Joseph H. Rodriguez of New Jersey on a dozen public issues. They sent him eight pages of interrogatories.

"I'm aghast that three senators would presume to do this," said Howard Metzenbaum, the Ohio Democrat.

"What's this all about?" asked Joseph Biden, Democrat from Delaware. "It's outrageous. It's crazy."

One aspect of the conservatives' questionnaire was indeed indefensible. The three conservative Republicans, by clear implication, wanted to know where Mr. Rodriguez stood on "a belief in the existence of a Supreme Being." That insolent inquiry flew in the teeth of the constitutional command that "no religious test shall ever be required as a qualification to any office or public trust under the United States." Senators Jeremiah Denton (Alabama), Orrin Hatch (Utah) and John East (North Carolina) had no business raising the question, even in the context of the rights of handicapped infants.

Once that blunder has been acknowledged, it remains to label the howls of Biden and Metzenbaum as vintage demagoguery. Political and philosophical tests have been applied to judicial nominees since George Washington made his first

appointments to the federal bench. Senators Denton, Hatch and East were not more brazen than their predecessors; they were only more efficient.

The three senators submitted questions dealing with abortion, prayer in public schools, the right to bear arms, the Equal Rights Amendment, union power, the death penalty, affirmative action and school desegregation. Mr. Rodriguez, a Democrat of Hispanic descent, has been endorsed by New Jersey's two Democratic senators for the District Court vacancy. According to the Washington Post, "He has been active in promoting the rights of minorities."

Senator Hatch made no bones about his purpose in sending the questionnaire to the nominee. Republicans want to ensure, as best they can, that lifetime federal judges will go to the bench with a conservative cast of mind. "Every administration is concerned about having judges that share their judicial philosophy," said Mr. Hatch. "If anyone thought that Jimmy Carter didn't have a litmus test, they're crazy."

Precisely so. Mr. Carter never had a chance to make an appointment to the Supreme Court, but during his presidency he named 262 other federal judges. Sheldon Goldman, a professor of political science at the University of Massachusetts, found that 94 percent of Mr. Carter's District Court nominees and 89 percent of his appellate nominees were Democrats. Mr. Reagan has been just as partisan — indeed, a little more partisan — in his nominations.

One of Mr. Goldman's students, Jon Gottschall, made a further analysis of decisions by the Carter appointees. In cases involving the rights of criminals and prisoners, the Carter judges favored the defendants 58 percent of the time, compared with 30 percent in similar cases decided by Nixon appointees. In sex discrimination cases, Carter judges voted for the women 59 percent of the time, compared with 39 percent for Nixon judges. In cases involving racial discrimination, the ratio was 60 percent to 43 percent.

These findings do not suggest accident; they suggest design. The system is part of the grand design established by the Founding Fathers in the Constitution. A president names federal judges in his own philosophical likeness. Then that president goes out of office, and his

judges remain on the bench. New presidents of different persuasion come into the White House; a different philosophy shapes both the Constitution and our statutory law. This is the way the system has worked from the beginning. This is the way it ought to work.

New York's Daniel Patrick Moynihan, the Senate's most gifted huffer and puffer, does not agree. "There is a word for ideological tests of the judiciary," he says. "That word is corruption." Well, there also is a word for Mr. Moynihan's posturing. The word is baloney.

*file w/
Moynihan
letter*

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Judicial Nominee's Rejection Assailed

By LESLIE MAITLAND WERNER

Special to The New York Times

WASHINGTON, April 1 — Senator Daniel Patrick Moynihan charged today that the Reagan Administration's decision not to nominate an official of the Legal Aid Society to a Federal judgeship in Manhattan reflected a political approach that "corrupts the system of appointment."

"There is a word for the ideological tests for the judiciary which are seemingly now in place in the White House and the Justice Department," the Senator, a Democrat of New York, said in a letter to White House Counsel Fred F. Fielding. "The word is corruption."

The use of a "political test for Federal judges," he added, "corrupts the system of appointment at its very outset."

In his letter, Senator Moynihan, who had recommended the Legal Aid Society official, William E. Hellerstein, for a vacancy in the Federal District Court in Manhattan more than a year ago, said he had tried to learn the status of the recommendation "in various ways" since then, but that "the administration has continued to evade our inquiries."

'Proper Judicial Philosophy'

The Senator said he had learned of the administration's decision through an article in The New York Times today, which quoted administration officials as having said that Mr. Hellerstein was qualified for the Federal bench, but that his views were regarded as being not consistent with the President's.

Mr. Fielding, who heads the Federal Judicial Selection Committee, said today that he could not comment on Senator Moynihan's letter because he had not yet seen it. But he said that Mr. Hellerstein was "not consistent with what the committee was looking for."

In an interview last week, Mr. Fielding said, "There is no litmus test on any particular issue" for selecting judges. Rather, he said, the President was seeking nominees "who share his understanding of proper judicial philosophy — that is, who view the courts as interpreting the law, rather than enacting it."

Mr. Hellerstein, chief of the criminal appeals division of the Legal Aid Society, said today that he had never been interviewed by anyone in the Administration.

Distortion Claimed

He also said that opponents of his nomination had taken remarks out of context from articles that he had written 15 years ago in an attempt to portray him as opposed to narcotics prosecutions, "which I never had been."

Mr. Hellerstein was recommended to the White House by Mr. Moynihan and his Republican counterpart, Senator Alfonse M. D'Amato, under an unusual agreement between them that permits the Senator whose party is not in power to recommend a nominee for one of

every four Federal judicial openings in the state.

Senator D'Amato, who had supported Senator Moynihan's selection of Mr. Hellerstein, said the Administration's rejection of Mr. Hellerstein would not imperil their arrangement. He said he would seek another candidate from Mr. Moynihan.

Mr. Hellerstein's supporters, including Leonard Garment, a lawyer who is chairman of the bipartisan screening panel that recommends judicial candidates to Senator Moynihan, have said that New York lawyer Roy M. Cohn was one of those responsible for blocking Mr. Hellerstein's nomination.

Cohn's Criticism

In an interview last June, Mr. Cohn said that at the Administration's request, he had sent some of Mr. Hellerstein's legal writings to the White House.

Mr. Cohn said today that he did not regard Mr. Hellerstein as qualified to be a Federal judge "under the mandate given to this Administration by the electorate, after a campaign in which one of the hotly contested issues was the enormous percentage of ultra-liberal issues put on the bench in the Carter Administration."

In his letter to Mr. Fielding today, however, Senator Moynihan recalled that 24 former Federal prosecutors from Manhattan had written to the Attorney General last year urging Mr. Hellerstein's "prompt appointment."

He added that concern over the delay in the appointment had led two prominent New York lawyers — Harold R. Tyler Jr., a Republican and a former Federal judge, and Leon Silverman, who served as special prosecutor in the investigation of former Labor Secretary Raymond Donovan — to visit Mr. Fielding about two weeks ago, pressing for action on Mr. Hellerstein's appointment.

In interviews today, Mr. Tyler and Mr. Garment, who is the lawyer for Attorney General Edwin Meese 3d, lent strong support to Mr. Hellerstein. Mr. Tyler described Mr. Hellerstein as "intellectually qualified" and "tougher than nails."

Calling Mr. Hellerstein's views "mainstream legal views," Mr. Garment said: "It is a loss to the bench that the Hellerstein appointment is not going forward, and it is based on an inadequate — indeed nonexistent — appraisal of his views, because he was not even interviewed by anyone at the Justice Department or the White House."